



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MRA-3/47437

PRELIMINARY RECITALS

Pursuant to a petition filed January 5, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Barron County Dept. of Social Services in regard to medical assistance, a hearing was held on February 7, 2001, at Barron, Wisconsin.

The issue for determination is whether the community spouse's asset allocation may be increased.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Judy Ferber, ESS  
Barron County Dept Of Human Services  
Courthouse Room 338  
330 E Lasalle Ave  
Barron, WI 54812

**EXAMINER:**

Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. The petitioner (SSN [REDACTED] CARES [REDACTED]) has resided in a nursing home in Barron County since November 17, 2000.
2. The petitioner's application for medical assistance was denied because his and his wife's assets exceeded the limit allowed by the program.
3. The petitioner and his wife have a combined total of \$93,585.68 in assets.
4. The assets held by the petitioner and his wife generate \$407.02 in income each month.
5. The petitioner receives \$691 in social security each month.
6. The petitioner's wife receives \$407 in social security each month.

### DISCUSSION

The federal Medicare Catastrophic Coverage Act of 1988 (MCAA) is designed to protect from destitution a person whose spouse enters a nursing home and receives medical assistance. The law allows couples with assets under \$100,000 to assign \$50,000 to the community spouse. §49.455(6)(b)3, Wis. Stats. *MA Handbook*, Appendix 23.4.2. Because an institutionalized person can have up to \$2,000 in assets, couples in this position generally are allowed to have up to \$52,000 in assets and still maintain one of the spouse's eligibility for medical assistance. Nevertheless, if the community spouse's income does not provide for her needs, she may request through a fair hearing that the asset limit be increased. The minimum monthly maintenance needs allowance currently is the lesser of \$2,103 or \$1,875 plus excess shelter costs. *MA Handbook*, Appendix 23.6.0.

The parties agree that petitioner and his wife have assets totaling \$93,585.68, much of which is in various investments. They also agree that these assets produce about \$407.02 a month in income. When this amount is added to the combined \$1,098 that the couple receives in social security each month, their total monthly income is \$1,505.52. The petitioner retains \$40 of this amount for his personal expenses, leaving his wife with \$1,465.52 if the rest is assigned to her. §49.455(3), Wis. Stats. This is over \$300 less than the monthly minimum allowed to her by medical assistance rules. Because many of these assets produce investment income, forcing the couple to liquidate assets would reduce the wife's income even further. Therefore, all of the couple's assets may be assigned to the wife.

### CONCLUSIONS OF LAW

1. The petitioner's wife requires assets in excess of the established asset allowance in order to generate monthly income at the minimum monthly maintenance needs allowance.
2. All of the assets may be allocated to the petitioner's wife in the MA eligibility determination.
3. The petitioner is not over the asset limit for institutional MA eligibility.

NOW, THEREFORE, it is

ORDERED

That the petition for review is remanded to the county agency with instructions to certify petitioner as eligible for institutional medical assistance effective the date he was institutionalized. This shall be done within 10 days of the date of this decision.

### REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

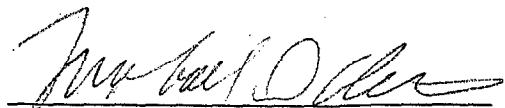
### APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this 20 day  
of February, 2001.



Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals  
213/MDO

cc: BARRON COUNTY DEPT OF HUMAN SERVICES  
DHFS - Susan Wood